# PROXIMATE CAUSE

## Responsibility for Consequences of Injury

Plaintiff purchased candy from defendant containing glass or other hard substance. A few hours after eating the candy plaintiff suffered convulsions and hemorrhage and later passed a large coagulated blood tumor and has since that time been paralyzed from the waist down. Three years after eating the candy a Wasserman test revealed a 3 plus or third stage syphilitic condition of plaintiff's system. The defendant contends the injuries are due to the syphilis and not the glass in the candy. Medical testimony established that many symptoms of plaintiff's condition were those of syphilis but the same testimony also showed that one may have a latent syphilis and remain in general good health until trauma or other great shock or lowered vitality brings it into an active stage. *Held,* defendant liable for all injury caused by the disease. *Nath* v. *S. S. Kresge Co.,* 54 Ohio App. 315 (1936).

The court in allowing recovery is in accord with previous holdings in Ohio and the majority of other American jurisdictions. *Industrial Commission of Ohio* v. *Gotshall,* 127 Ohio St. 295, 188 N.E. 604, 19 Ohio Abs. 652, 3 O.O. 515 (1935); *The Cincinnati Traction Co.* v. *Frank,* 6 Ohio App. 112, 26 C.C. (N.S.) 241, 30 C.D. 290 (1915); *Crane Elevator Co.* v. *Lippert,* 63 Fed. 942 (1894); *Sloan* v. *Southern California R. Co.,* 111 Cal. 668, 44 Pac. 320, Am. Neg. Cases 76, 32 L. R.A. 193 (1896); *Miller* v. *St. Paul City R. Co.,* 66 Minn. 192, 68 N.W. 862 (1896); *Bergstrom* v. *Industrial Commission,* 286 Ill. 29 (1918); *contra, O'Neil* v. *Morgan's Louisiana and Texas R.R. and Steamship Co.,* 5 La. App. 94 (1926); *Caldwell* v. *City of Shreveport,* 150 La. 465, 90 So. 263 (1922).

Assuming defendant's negligence to be the legal cause of an injury to the plaintiff the question remains, for what consequences of the injury is the defendant in contemplation of law responsible? In determining the extent of liability most courts say that the defendant is liable for all those damages which flow naturally and proximately from the original injury.

A leading Massachusetts case, *Larson* v. *Boston Elevated Co.,* 212 Mass. 262, 98 N.E. 1048 (1912), agrees with the holding in the principal case but in a dictum declared that if the germ causing the disease entered the system subsequent to the original injury, no liability would be imposed. A different conclusion was reached in a case which presented this problem, *Terre Haute R. Co.* v. *Buck,* 96 Ind. 346, 49 Am. Rep. 168 (1884), and the *American Law Institute's Restatement*

*on the Law of Torts*, Vol. II, sec. 458 would impose liability providing the disease which is subsequently contracted is clearly the result of the weakened condition of the plaintiff's system.

Two analogous groups of cases deal with recovery for injuries aggravated by a later accident or improper treatment by a negligent physician. In *Hoseth* v. *Preston Mill Co.*, 49 Wash. 682, 96 Pac. 423 (1908), the court remarked, "The rule is that the injured person must exercise reasonable care to effect a cure, both as to the selection of a physician and as to his own personal conduct, and if he does so he may recover all damages flowing naturally and proximately from the original injury."

So it has been held that the original wrong doer is liable also for the negligent treatment by the physician. *Loeser et al.* v. *Humphrey*, 41 Ohio St. 378, 52 A.R. 86 (1884); *Tanner* v. *Espery*, 128 Ohio St. 82, 190 N.E. 229, 40 Ohio L.R. 646, 14 Ohio Abs. 672 (1934); *O'Quinn* v. *Alston*, 213 Ala. 346, 104 So. 653, 39 A.L.R. 1263 (1925); *Boa* v. *San Francisco-Oakland Terminal Rys.*, 182 Cal. 93, 187 Pac. 2 (1920). At least if such negligence ought reasonably to have been anticipated, *McIntosh* v. *Atchison T. and S. V. Ry. Co.*, 109 Kan. 246, 198 Pac. 1084 (1921); *Purchase* v. *Seelye*, 231 Mass. 434, 128 N.E. 413, 8 A.L.R. 503 (1918); and if not materially contributed to by the plaintiff, *Wright* v. *Blakeslee*, 102 Conn. 162, 128 Am. 113 (1925).

Similarly the original wrongdoer has been held liable for subsequent injuries to the plaintiff, such as the rebreaking of a leg if the plaintiff at the time was in the exercise of due care, *Stahl* v. *Southern Mich. R. Co.*, 211 Mich. 350, 178 N.W. 710 (1910); *Clayton* v. *Holyoke Street R. Co.*, 236 Mass. 359, 128 N.E. 460 (1920); *Postal Telegraph Cable Co.* v. *Hulsey*, 132 Ala. 444, 31 So. 527 (1901).

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# TORTS

## INTERFERENCE WITH PROBABLE EXPECTANCY OF RECEIVING PROPERTY UNDER A WILL

By threats of violence and bodily injury, the defendant prevented his wife from completing the execution of an unattested will which she had drawn, and wherein she had provided a small legacy for the plaintiff, the sister of the decedent. After the death of the wife, the plaintiff, seeking to recover the amount of the proposed legacy, sued the defendant